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UNCLAS SECTION 01 OF 02 HANOI 003343

SIPDIS

STATE FOR EAP/MLS, EB/TRA AND EB/TPP
STATE PASS MARAD FOR BRUCE CARLSON
STATE PASS USTR ELENA BRYAN AND GREG HICKS
USDOC FOR 4431/MAC/AP/OPB/VLC/HPPHO
TREASURY FOR OASIA

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E.O. 12958: N/A
TAGS: EWWT ETRD VM
SUBJECT: SUCCESSFUL MARITIME NEGOTIATIONS IN VIETNAM

¶1. (SBU) Summary: The United States and Vietnam initialed, ad referendum, a draft Agreement on Maritime Transport after three days of intensive negotiations on December 6-8, 2005. The agreement provides shipping companies of each party the right to form 51 percent joint ventures immediately and to establish wholly owned subsidiaries within each other's territory after five years. Up to now, state owned monopolies had controlled Vietnam's maritime sector. However, according to the annex, upon Vietnam's entry into the WTO, one U.S. shipping company may establish a wholly owned company in Vietnam before the five-year limit. While the recent EU agreement included a similar right, U.S. terms for equity joint ventures are more favorable. End Summary.

¶2. (U) A U.S. team led by Bruce Carlton, Associate Administrator for Policy and International Trade, U.S. Department of Transportation and a Vietnamese team led by Mr. Vuong Dinh Lam, Chairman, Vietnam Maritime Administration, held discussions December 6-8, and agreed, ad referendum, on the text of an Agreement on Maritime Transport. This was the third negotiating session in 2005. The two sides met last June hoping to reach agreement in time for Vietnamese Prime Minister Phan Van Khai's visit to the United States, but their positions were too far apart at that time. After lawyers on both sides have approved the draft text, the two sides will seek a suitable date for signing, possibly on the margins of one of next year's APEC meetings in Vietnam.

¶3. (SBU) Liberalization of Vietnam's transportation sector has been the critical focus of the negotiation of this Maritime Agreement, although the Agreement also addresses fundamental maritime transportation matters, such as vessel documentation, immigration and customs, and assistance to vessels in distress. While the United States maritime market is open, state-controlled monopolies control nearly every aspect of operation in Vietnam's maritime sector. Any company wishing to do business in Vietnam must do so through a joint venture, with the Vietnamese partner controlling the majority share of the business decision-making and profits.

¶4. (SBU) The Agreement will give vessels of each party the right to transport cargo and passengers between each other's territory and the territory of third countries. Shipping companies of each party will have the right to invest up to 51 percent of the legal capital (a controlling share) in joint ventures in the territory of the other party. These joint venture enterprises would be allowed to perform a comprehensive range of maritime services, including: cargo agency, cargo documentation, cargo management, ocean freight forwarding, storage and warehouse services, and container station and depot services. In five years, shipping companies will be allowed to establish wholly owned companies in each other's territory. The joint ventures (and later the wholly-owned companies) will have the right to use inland transportation in connection with ocean shipping. Finally, entities of either party will have the right to fund port construction and to operate such ports. A separate annex to the agreement provides that, upon Vietnam's entry into the WTO, one U.S. shipping company will be permitted to set up a wholly owned subsidiary in Vietnam, notwithstanding the five year limit. The term of the Agreement is five years, with an automatic renewal provision. There is the customary consultation provision and termination clause that either Party may exercise at any time.

¶5. (SBU) Comment: The agreement met the U.S. negotiating team's goal of meeting or exceeding the rights that Vietnam gave other foreign shipping companies in agreements that it had signed with Singapore and with the EU. (A similar right to one wholly owned company was recently granted to the EU, but the U.S. obtained more favorable terms for equity joint ventures.) The Agreement not only sets up the framework for maritime shipping between the United States and Vietnam to

expand to meet future needs, but also should help Vietnam attract the foreign investment it urgently needs to improve its maritime transportation infrastructure. The United States will also consider providing some assistance in the maritime transport sector, such as maritime training to Vietnamese seafarers, and the Maritime Administration is exploring the possibility of other forms of development assistance. End Comment.

MARINE